Goldtex, Inc. *and* Amalgamated Clothing and Textile Workers Union, AFL–CIO, CLC. Cases 11–CA–13756, 11–CA–14175, 11–CA–14386, and 11–RC–5652

September 30, 1991

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

This case[1] presents the issues of whether the judge correctly found that: several acts by the Respondent's officials violated Section 8(a)(1) of the Act and interfered with a Board election; the Respondent warned and discharged employees Willie Boseman and Derek Burden in violation of Section 8(a)(3) and (4); and the Respondent lawfully discharged employee Douglas Horne.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions[3] and to adopt the recommended Order.

[1] On March 30, 1992, Administrative Law Judge J. Pargen Robertson issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed exceptions and a supporting brief. The Respondent filed an answering brief to the General Counsel's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinves us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We correct the following errors in the judge's decision:

1. The judge mistakenly stated that Supervisor Kevin Young told employee Willie Boseman that ''This plant will never be unionized—organized.'' It was Boseman who made the statement to Young.

2. The judge stated that Boseman received a written warning on August 5, 1990, for being out of his work station. The correct date of that warning is August 16, 1990.

3. The judge indicated that the local and state criminal investigation of employee Douglas Horne preceded his discharge on December 18, 1990. The Respondent did not refer the matter of Horne's alleged falsification of magazine subscription applications to local police until the day after his discharge. Consequently, the Respondent was not aware of any unwillingness of law enforcement officials to bring criminal charges against Horne when it discharged him.

4. The judge stated that complaints against Derek Burden involved productivity. The record indicates, however, that Burden had also received prior warnings concerning his job performance.

None of these errors affect the ultimate findings and conclusions in this case.

[3] We agree with the judge's conclusion that the Respondent lawfully discharged employee Douglas Horne. Even assuming arguendo that the General Counsel established a prima facie case of discriminatory motivation in violation of Sec. 8(a)(3) and (4), we find that the Respondent met its burden of establishing that it would have discharged Horne even in the absence of his protected activities based on a reasonable belief that he had forged magazine subscriptions. See *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). In additional support of this finding, we rely on the previously noted fact that the Respondent was unaware of any unwillingness by law enforcement officials to take action against Horne when it discharged him based on the results of its own internal investigation.

Member Devaney finds it unnecessary to pass on the 8(a)(4) findings regarding the warnings to and discharges of employees Boseman and Burden.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Goldtex, Inc., Goldsboro, North Carolina, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[Direction of Second Election omitted from publication.]

Jasper C. Brown Jr., Esq. and *Michael W. Jeannette Jr., Esq.*, for the General Counsel.

Terry A. Clark, Esq. and *Clark Keim, Esq.*, of Winston-Salem, North Carolina, for the Respondent.

DECISION

J. PARGEN ROBERTSON, Administrative Law Judge. This matter was heard in Goldsboro, North Carolina, on November 5 through 8, 1991. Involved are allegations that Respondent engaged in numerous independent violations of Section 8(a)(1) of the National Labor Relations Act (the Act); that two employees received warnings and four employees were discharged by Respondent, in violation of Section 8(a)(1), (3), and (4) of the Act; and that Respondent granted an across-the-board wage increase in violation of Section 8(a)(1) and (3) of the Act. The final consolidated complaint issued on June 13, 1991. Additionally this matter concerns issues raised by objections filed by the Union.

I have considered the entire record including briefs filed by Respondent and the General Counsel, in reaching this decision.

With one exception the only matters at issue are the allegations of unfair labor practice violations and objections in the representation case. Other matters including the jurisdictional allegations were admitted. In that regard Respondent admitted that it is an employer engaged in commerce as defined in Section 2(6) and (7) of the Act, with a plant located at Goldsboro, North Carolina, where it is primarily engaged in the business of printing and dyeing textile products and that the Charging Party (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

The parties did dispute whether an investigator was an agent of Respondent. As to that matter the record evidence showed that David Grimes is the owner of Grimes Investigations, a private investigation firm. Grimes is also the owner of Century Security Services, a security guard and patrol business, and Sierra Enterprises, a specialty equipment company that supplies special equipment such as night vision equipment and firearms to law enforcement agencies and the security industry. The General Counsel alleged that Grimes was acting as Respondent's agent when he interviewed

former employee Douglas Horne regarding an allegation that someone ordered magazine subscriptions for Respondent without authorization.

The evidence proved that Respondent did employ Grimes to investigate the matter of unauthorized magazine subscription but Grimes was not employed as an employee. Instead Grimes was employed to investigate that matter in the course of his position as the owner of Grimes Investigations. While he interviewed Douglas Horne, Grimes was specifically acting in the role for which he was employed by Respondent. I find that the evidence showed that David Grimes was an agent of Respondent as to material actions.

The record included testimony that the Union began an organizing campaign among Respondent's employees at the Goldsboro plant in December 1989. Respondent admitted that it learned of that union organizing campaign on January 10, 1990, when it received a phone call from the NLRB Regional Office advising that the Union had filed a petition for an election. The record illustrated that the Union filed a petition for an election on January 8, 1990, and that an election was held on March 1, 1990. The Union did not receive a majority of the valid votes counted.

I. THE 8(A)(1) ALLEGATIONS AND OBJECTIONS

The complaint includes allegations that Respondent engaged in the following because of its employees' union organizing campaign during January and February 1990. As to the matter raised in the representation case, as shown above, the critical period ran from January 8, when the Union filed its petition, until March 1, 1990, when the election was held.

A. *Allegations Involving Reduction in Hours of Work*

During February 1990 John Gervin and employees Holloway, Willie Williams, and Keith Sutton talked with Supervisor James Williams about the Union. James Williams told the four employees that they would be working less hours and things would pick up after the election when Will Hopper will have time to concentrate on his plant instead of the Union. Gervin testified that his hours were actually reduced during February.

James Williams denied that he ever talked with either John Gervin or Michael Holloway about the Union. Williams admitted that he talked to some employees about how to request return of their union authorization cards but, according to Williams he had those conversations only with employees that came to him and asked how they could get their cards back. Williams did not name any of those employees.

However, after denying that he ever talked to John Gervin about the Union, when asked specifically did John Gervin ever talk to you about the Union, Williams answered yes. Williams also admitted that Gervin let him know that he supported the Union.

Findings

I was not impressed with the demeanor of James Williams. Williams was evasive in his testimony and he appeared to vacillate in his answers. I was impressed with the testimony of John Gervin and I credit his testimony.

I find that Supervisor John Williams engaged in conduct violative of the Act by telling his employees they would be working less hours and things would pick up after the election when Respondent's president would have time to concentrate on his plant instead of the Union. *Fort Wayne Foundry Corp*., 296 NLRB 127 (1989); *Taylor Chair Co*., 292 NLRB 658 (1989); *McCarthy Processors*, 292 NLRB 359 (1989).

B. *Interrogated and Threatened its Employees with Loss of Jobs*

Michael Holloway testified that Supervisor James Williams asked why the employees were going for the Union and that they should get their union cards back because it was going to hurt them. Williams said that Holloway could lose his job by having the Union. Holloway responded to cross-examination that he did not recall wearing anything that would identify him as a union supporter.

James Williams was the supervisor in the warehouse from February 5 until December 1990.

As shown above, James Williams denied that he ever talked with Michael Holloway about the Union. Williams admitted that he talked to some employees about how to request return of their union authorization cards but, according to Williams, he had those conversations only with employees that came to him and asked how they could get their cards back.

Around December 17, 1990, Willie Boseman was given a warning by Kevin Young. Young told him that he had to write up Boseman for some damaged cloth. When Boseman kept refusing to sign the writeup, Young said that the Company was out to get Boseman. Boseman testified that Young said, ''Look at your T-shirt. He said, it's an ACTWU T-shirt. So, you've been talking to people about the Union.'' Boseman told Young that he had not been talking to anyone. Young said, ''This plant will never be unionized organized.''

Young told Boseman that if he did not sign the writeup the Company would do another investigation and would probably terminate him.

Kevin Young denied that he told Boseman that Respondent was out to get him and that they would conduct another investigation and probably terminate Boseman.

Findings

As shown above I found James Williams was not a credible witness. As to the matter involving Williams, I credit the testimony of Michael Holloway.

I was impressed with the testimony of Willie Boseman. Boseman, an alleged discriminatee, was on the stand for a considerable time. He appeared to testify forthrightly even though at times, his testimony did not appear to favor his position. I have determined to credit Boseman unless credible evidence illustrates that particular testimony was erroneous. As to Kevin Young, I was not as impressed with his demeanor and I do not credit his testimony over that of Boseman. As shown below Young's testimony conflicted with that of several other witnesses including at least one witness for Respondent.

In view of my credibility findings, I find that James Williams interrogated Michael Holloway (see *Southwire Co. v. NLRB*, 820 F.2d 453 (D.C. Cir. 1987); *Kona 60 Minute Photo*, 277 NLRB 867 (1985); *Sunnyvale Medical Clinic*, 277 NLRB 1217 (1985); *WXON-TV*, 289 NLRB 615, 619 (1988); *NLRB v. Brookwood Furniture*, 701 F.2d 452 (5th Cir. 1983); *Bakers of Paris*, 288 NLRB 991 (1988); *Holiday*

Inn-Glendale, 277 NLRB 1254, 1275 (1985); *Premier Maintenance*, 282 NLRB 10 (1986)), and threatened Holloway with loss of his job if the Union was successful. I find that Kevin Young threatened Willie Boseman that Respondent was out to get Boseman because of Boseman's support of the Union and that the Company would conduct another investigation and probably discharge Boseman. *299 Lincoln Street, Inc*., 292 NLRB 172 (1988); *National Micronetics*, 277 NLRB 993 (1985); *Southwire Co*., 277 NLRB 377 (1985).

C. *Solicited its Employees to Withdraw Their Union Authorization Cards*

James Gervin testified that during February 1990 Supervisor James Williams talked with him and employees Willie Williams, Holloway, and Sutton. James Williams gave the employees copies of a letter and told them that they could get their union cards back by signing the letter.

John Gervin identified a letter captioned ''(SAMPLE LETTER),'' as the letter Williams had shown the employees, which was addressed to the Union. That letter requested cancellation and return of the signatory employee's union card.

Supervisor James Williams admitted that he did show some employees forms and he explained to the employees how to fill out the forms to get their union cards back, after the employees had asked him how they could get their cards back. Williams testified that he did not distribute the forms illustrating how to request return of union authorization cards, to every employee in the warehouse. Williams denied that he ever talked with John Gervin or Michael Holloway about the Union. However, as shown above, when asked if Gervin ever talked to him about the Union, Williams answered yes.

Findings

In view of my previous credibility findings, I do not credit the testimony of James Williams. I do credit the testimony of John Gervin. The credited evidence illustrates that James Williams solicited employees to withdraw their union authorization cards. *Fabric Warehouse*, 294 NLRB 189 (1989); *Lott's Electric Co*., 293 NLRB 297 (1989).

D. *Prohibited Employees from Distributing Union Leaflets*

On January 29, 1990, Willie Boseman was told by Department Head Sammy Hines that he could not pass out union leaflets on company property. Boseman was passing out union leaflets at the time in the parking lot. Hines told him that he would have to either put the leaflets in his car or get off company property.

Sammy Hines testified that after an employee complained about being confronted with distribution of union leaflets when he came into work, Hines noticed Willie Boseman passing out the leaflets at a point where parked vehicles funnelled employees through a small opening into the plant. Hines testified that he went up to Boseman and said, ''Willie, . . you can't be handing out literature out here. . . . you're going to have either get off of our property or put your literature in your car and come on in and get ready for work.'' Boseman responded, ''I think you're wrong, I can do this.'' Hines testified that he told Boseman, ''Well, I don't think so, Willie. You've got the choice, either leave the property, put the stuff in your car and come on into work. One or the two, the choice is yours.'' Boseman again protested that he thought Hines was wrong but went to his car, put the literature in the car and came into the plant. Hines testified that he did not recall whether there were other employees there at the time but he felt sure there were other employees walking around during that time.

According to Hines, he then discussed the matter with Tom Reece in personnel and Reece told him that he thought he had made a mistake, that Boseman did have the right to distribute the literature as long as they were not in production areas or distributing the literature on workers' time.

Hines testified that later that day he went to Boseman and apologized that he had been wrong in telling Boseman that he could not distribute union leaflets in the parking lot. Hines recalled that he told Boseman that all he asked was that Boseman not block the sidewalks and the entrances to the plant and not to force the literature on people.

Boseman denied that Hines came to him and apologized.

Findings

As shown above, I find Willie Boseman was a credible witness. In view of his testimony and the admissions of Sammy Hines, I find that Hines illegally prohibited Boseman from distributing prounion literature in nonwork areas during nonwork time. Moreover, I credit the testimony of Boseman and find that Sammy Hines did not apologize to Boseman and admit that he was mistaken in prohibiting the distribution. *Southern Maryland Hospital*, 293 NLRB 1209 (1989); *All American Gourmet*, 292 NLRB 1111 (1989).

F. *Promised Unspecified Benefits*

1. Will Hopper

Current employee John Gervin testified that he attended meetings called by Respondent among warehouse employees in the conference room of the main plant during January and February 1990. Gervin testified that Will Hopper, Respondent's president, chief operating officer, and chief financial officer, spoke at the meetings and that Hopper told the warehouse employees that he could not promise them anything during the union campaign but that after the NLRB election there would be major changes and that if the employees had any problems with supervisors or favoritism toward one, the employees should come and talk to him.

Gervin in a prehearing affidavit, testified that Hopper, during his meetings with employees, told them that the Union has nothing to offer, that a lock out could happen but that Hopper never threatened plant closure or loss of benefits. Hopper did say that now everything would be on the bargaining table; that the employees would have to pay their own medical benefits if on strike; and that there would be changes in supervision.

Tom Reaves, director of management information services for Respondent, testified that he was present with Will Hopper when Hopper had one-on-one meetings with employees in the Grey Warehouse. Reaves denied that Hopper ever promised changes or threatened to close the plant during those meetings.

Reaves testified that only employees that asked to meet with Will Hopper were called into the one-on-one meetings.

No one that did not volunteer was called into any of those meetings.

Will Hopper testified that during the employee speeches he specifically told the employees that he could make no promises.

Current warehouse employee Michael Holloway attended meetings conducted by Will Hopper in the main plant. Holloway recalled Hopper telling the employees that you never know, he might close the doors down and that there would be some changes after the election.

Former employee Q. C. Walls testified that he attended a meeting in the conference room during January 1990. Will Hopper spoke to the employees. Walls testified that Hopper said the Company had no need for a union and he would not negotiate with the Union. Hopper said this thing could drag on for years as far as he was concerned. Walls testified that he was not allowed to attend other meetings between management and the employees. His supervisor told him that he was not allowed to attend because employees that had already made up their minds were not permitted to attend.

Henry Berry, the assistant plant engineer, testified that he excluded three employees under his supervision, from some of Will Hopper's speeches against the Union, including Q. C. Walls. Berry testified that Walls came to him and asked why he was not allowed to attend Hopper's meetings and Berry said that he told Walls that Walls had been disruptive in prior meetings and that was the reason he was asked not to attend.

Just before the election in late February, John Gervin talked with Will Hopper in Supervisor James Williams' office in the warehouse. Gervin told Hopper that he did not want to talk about the Union. Gervin was concerned because his former job of section leader had been taken away. Hopper told him that he could not promise anything before the election but that there would be major changes after the election.

Former employee Linwood Seawell attended some meetings held by Will Hopper during the union campaign in January and February 1990. Seawell recalled that Hopper showed films and spoke to the employees. Hopper said that he did not have to do anything with the Union, that if they put a proposal on the table he could push it away. Hopper said that he had an open door policy, anybody had any complaints they could come to him for advice. Before that time, according to Seawell, he had heard nothing about an open door policy. Seawell testified that Hopper told the employees that he could close the plant and he could have a lockout if there was a strike. On cross-examination Seawell admitted that Hopper told the employees that Respondent was obligated to negotiate in good faith if they selected the Union as their bargaining representative.

Alleged discriminatee Nelson Artis testified that he did not recall Will Hopper threatening to close the plant or promising good things during Hopper's talks against the Union. Artis testified that Hopper did say that he would not negotiate if the Union won the election.

Will Hopper testified that he told the employees that the Company had an obligation to bargain fairly if the employees selected the Union, and the Company would do so in every way. Hopper denied that he ever told any employee that the Company would not bargain with the Union. He denied that he ever told an employee that the Union cannot help them. Hopper denied telling the employees that negotiations could drag on for years. According to Hopper he told the employees that he could not predict what the Union would request and that negotiations could last either a short or a long time depending on those requests.

Hopper testified that he frequently told the employees that he could make no promises. He admitted that he did ask the employees to give him another chance.

Findings

As shown above there was considerable differences in the various recollections regarding the speeches by Will Hopper. That is understandable in view of the fact that Hopper actually conducted a series of meetings with groups of employees and each group attended several meetings. Some employees were excluded from some of the meetings but generally, all employees attended several meetings.

In view of the overall testimony I am convinced that Hopper made several statements designed to assure the employees that he was restrained by law as to what he could say during the union campaign. However, I was also impressed with the testimony of several employees including John Gervin and Will Hopper himself, showing that Hopper mentioned that he should be given another chance. Also I find convincing the testimony that Hopper told the employees that there would be changes after the election. I was also convinced from the testimony of employees including Linwood Seawell, that Hopper for the first time told the employees that they were free to come and discuss their problems with him.

Hopper's comments to the effect there would be changes after the election and his offer, for the first time, to be available for employees to discuss with him, their problems, constitutes conduct violative of Section 8(a)(1) and objectionable conduct. *Marshalltown Trowel Co*., 293 NLRB 693 (1989); *Pennsy Supply*, 295 NLRB 324 (1989).

2. Sammy Hines

Willie Boseman testified that Department Head Sammy Hines came to his machine in the evening of January 29, 1990, and told him that he should keep an open mind about what Will Hopper had to say about the Union and that Hopper had said he was going to make some changes, a lot of changes. Hines said that if Hopper did not make the changes Hines would quit working for the Company.

Sammy Hines admitted telling employees they should keep and open mind and listen to Will Hopper. Hines denied that he told any employee that the plant would close as a result of the union attempt and he denied that he ever told any employee that he would quit his job if Will Hopper did not make changes.

Findings

As shown above, I was impressed with the testimony of Willie Boseman. I credit his testimony that Sammy Hines told him that Will Hopper had said he was going to make changes after the election. I do not credit the testimony of Sammy Hines to the extent it conflicts with that of Boseman. Hines' testimony did, on occasion, conflict with the testimony of others and, although on many occasions I was impressed that Hines was trying to testify truthfully even

though some of the testimony was harmful to Respondent, I was not convinced that he was completely candid. As shown below I was especially unimpressed with Hines' testimony regarding the justification for the discharge of Willie Boseman.

Hines comments regarding changes after the election constitutes objectionable conduct and violation of Section 8(a)(1). *Marshalltown Trowel Co*., supra; *Pennsy Supply*, supra.

3. Charles Smith

Boseman testified that Department Head Charles Smith came to his machine on February 16, 1990, and told him to listen to Will Hopper and that the problems in the plant could be worked out without a union. Smith told Boseman that the employees should go to Hopper's office and talk to Hopper about the things that were wrong in the plant.

Charles Smith testified that he recalled one conversation with Willie Boseman:

> I told him that if he just trusted Mr. Hopper and give him another chance, that, I think he would see, you know, some improvement in the plant, that if there was any problems or questions, that he could feel free to go up and talk with him, because he had an open door policy and he could feel free to go up and talk with him anytime.

Findings

I credit the testimony of Willie Boseman which was substantially corroborated by Charles Smith. I find on the basis of Boseman's testimony that Smith held out the promise that the employees' problems could be worked out without a union if the employees would listen to Will Hopper. Smith also solicited Boseman to encourage the employees to go to Hopper and talk with Hopper about what they thought was wrong in the plant. *Marshalltown Trowel Co*., supra; *Pennsy Supply*, supra.

F. *Threatened its Employees with Futility if they Selected the Union*

Willie Boseman testified that his supervisor, Nick Samson (spelled Sanford in the transcript), came to him at his machine on February 15, 1990, and told him that he should listen to Hopper about the Union. Samson said that the Union could not do the employees any good and if the employees voted in the Union Hopper was just going to say no to everything.

Nick Samson who is now in quality control, but was finishing supervisor in early 1990, admitted talking with Willie Boseman in late January 1990, as well as with other employees that he supervised, about the Union. Samson testified that he told Boseman that the Union would only win the right to bargain if they won the election, that the Company has the right to refuse any union demand, that the Company would have to bargain in good faith but that Will Hopper would bargain for the Company and that Hopper would refuse anything that was not in the best interest of the Company. Samson admitted saying that Hopper could refuse any union proposal which was not in Respondent's best interest. Samson denied that he told Boseman that the Union cannot do anything for the employees or that he told Boseman that if the Union wins, Hopper does not have to do anything for the employees and was just going to say no to everything.

Findings

I credit the testimony of Willie Boseman. I do not credit Samson's testimony even though in many respects there are similarities between Samson's testimony and that of Willie Boseman. I am convinced that Samson told Boseman that he should listen to Will Hopper and that the Union could not do the employees any good and if the Union was voted in Hopper would just say no to everything. *McCarthy Processors*, 292 NLRB 359; *Cannon Industries*, 291 NLRB 632 (1988); cf. *Fern Terrace Lodge*, 297 NLRB 8 (1989), where the Board disagreed with an administrative law judge in finding that the facts did not support a finding of a violation.

G. *Threatened its Employees with Plant Closure*

1. Henry Berry

Former employee Q. C. Walls testified that during February 1990, his supervisor, Henry Berry, told him that Will Hopper did not have to agree with the Union and, it being Hopper's plant, Hopper could close the doors if he wanted to.

Henry Berry admitted talking to Walls but Berry denied telling Walls that Hopper could close the plant. Berry testified that the only thing he said to Walls was that Hopper would bargain in good faith.

Findings

I found unbelievable Henry Berry's testimony that the only thing he said to Q. C. Walls was that Will Hopper would bargain in good faith. I was impressed with Walls demeanor and I am convinced that he testified truthfully when he testified that Berry told him that Hopper did not have to agree with the Union and, it being Hopper's plant, that Hopper could close the doors if he wanted to. *Telex Communications*, 294 NLRB 1136 (1989); *Marshalltown Trowel Co*., 293 NLRB 693.

2. Charlie Hines

Willie Boseman recalled that Supervisor Charlie Hines came to him at work on February 19, 1990, and said that the Union is no damn good and was going to cause the plant to be closed.

Charlie Hines testified that he was a department head for Respondent in January and February 1990. Hines recalled talking to Willie Boseman about the Union. Hines denied telling Boseman that the Union was no damn good. He recalled that Boseman asked him about plants closing in Rocky Mount, North Carolina. Hines testified that he lived in Rocky Mount and a lot of unions had come into Rocky Mount and there was a lot of plants that closed down at the time. According to Hines he told Boseman that due to economic conditions a lot of plants in Rocky Mount were closing.

Findings

Again I was impressed with Willie Boseman's testimony. According to the testimony of Charlie Hines, he walked a fine line between talking about the Union coming into his

hometown of Rocky Mount, many plants closing in Rocky Mount, and that it was simple economics that caused those closings. I find that testimony unbelievable. I find in agreement with Boseman, that the message from Charlie Hines was that unions were no good and the Union was going to cause the plant to close. *Telex Communications*, supra; *Marshalltown Towel Co*., supra.

H. *Remedied Grievances*

Willie Boseman testified that the employees complained about Supervisors Mike Gillespie and Billy Ray Combs and that both those supervisors were reassigned by Respondent to other jobs.

In the course of the employee meetings Hopper made some announcements regarding management personnel. It was announced that three or four individuals had changed job positions, two new positions were created during that time and it was announced that Dave Parsons was being made human resources manager.

In late January 1990, Will Hopper told the employees that Mike Gillespie had been replaced by Cecil Robinson and that Gillespie had been reassigned in the plant.

Findings

As shown above there was considerable testimony showing that Will Hopper held out to employees there would be changes. In line with those promises he announced to the employees that some of their complaints, specifically those about some supervisors, were being handled in a positive fashion. Undesirable supervisors were being moved. *NLRB v. S. E. Nichols, Inc*., 862 F.2d 952 (2d Cir. 1988); *Pony Express Courier Corp*., 283 NLRB 868 (1987).

I. *Threatened its Employees With Unspecified Reprisals*

Henry Berry

Former employee Linwood Seawell testified that during January 1990 while he worked for Respondent, his supervisor, Henry Berry, asked him why he was wearing a no comment button. Berry told Seawell that it would be in his best interest to vote no, that the Union could not do anything but charge dues. On cross-examination after being shown his prehearing affidavit, Seawell agreed that Berry had talked to him in February instead of January.

Henry Berry admitted that he stopped Linwood Seawell and asked Seawell if he was understanding everything Will Hopper was telling the employees in the employee meetings. Seawell replied that he was understanding Hopper. Berry said that he then asked Seawell why Seawell was wearing that button, referring to Seawell's no comment button. Seawell responded that he was looking for fairness.

Findings

Linwood Seawell and Henry Berry did not differ greatly in their versions of their January conversation. I agree with the testimony which shows that Berry questioned Seawell about his no comment button and that Berry told Seawell that it would be in his best interest to vote against the Union. However, I do not find that comment to be coercisive. *Northern Wire Corp*., 291 NLRB 727 (1988); *Phoenix Glove Co*., 268 NLRB 680 fn. 3 (1984); cf. *Timsco, Inc. v. NLRB*, 819 F.2d 1173 (D.C. Cir. 1987).

J. *Orally Prohibited Employees From Talking*

In the early morning of December 17, 1990, Supervisor Kevin Young told Willie Boseman that the employees could not communicate with each other at the machines because of the union thing. Boseman asked if that was just for him and Young said no, it went for everybody.

On cross-examination Nelson Artis testified that Kevin Young told him that he did not want them talking because they might be talking about the Union.

Findings

I credit the testimony of Boseman and Artis that Supervisor Kevin Young prohibited them from talking because they might be talking about the Union. *Teamsters Local 543 (Gencorp Automotive)*, 294 NLRB 717 (1989); *Hotel Roanoke*, 293 NLRB 182 (1989).

II. THE 8(A)(3) AND 8(A)(4) ALLEGATIONS

A. *The Alleged Illegal Discharges*

Some of the alleged illegal discriminatees were allegedly discharged because of an accumulation of disciplinary actions against them. In that regard it is uncontested that around May 1, 1990, Respondent explained to its employees that it was instituting a new employee handbook and that it was at that time clearing the records in the sense that all prior warnings would be disregarded in consideration of future progressive discipline.

1. Willie Boseman

Willie Boseman was discharged on April 12, 1991. He had worked for Respondent or Respondent's predecessor, since 1976. At the time of his discharge Boseman was a machine operator in the finishing department.

Boseman signed a union authorization card on January 5, 1990. He told his supervisor that he supported the Union; solicited employees to sign Union authorization cards; wore prounion stickers, buttons, T-shirts, and hats; made house calls for the Union and passed out union leaflets at the plant gate and parking lots.

A couple of days after he signed his union card Boseman overheard Supervisor Mike Gillespie tell another supervisor that he knew the employees were engaged in union activity.

Boseman had two conversations with Department Head Sammy Hines regarding the Union on January 29, 1990. While Boseman was passing out union leaflets in the parking lot before work, Hines came to him and told him that he could not pass out the leaflets on company property. Hines told Boseman to either get off the property or put the leaflets in his car. That evening Hines came to Boseman's machine at work and told Boseman that he should keep an open mind about what Will Hopper had said about the Union and that Hopper had said he was going to make some changes. Hines told Boseman ''a lot of good changes, and that if [Hopper] didn't do what he said [Hines] would quit working for the Company.''

Under cross-examination Boseman admitted that despite the above incident he again passed out union leaflets with the union organizers.

Nick Samson who was the finishing supervisor in early 1990 admitted that Willie Boseman along with Thurman Burdon and Bobby Richardson, was purposefully excluded from some of Will Hopper's antiunion speeches. Samson admitted that those three employees were excluded from some of the speeches because Respondent felt those employees had already made up their minds and that Respondent knew their positions on the Union.

After Respondent implemented a new employee handbook on May 1, 1990, Willie Boseman received several warnings during the next year and was then discharged allegedly because he was involved in a third incident involving work quality, which justified disciplinary action. When it announced implementation of the new handbook, Respondent advised its employees that any disciplinary actions issued before May 1 would no longer receive consideration toward progressive disciplinary action.

Boseman received a warning on August 5, 1990, for being out of his work station. As shown below, I find that Respondent violated Section 8(a)(1) and (3) of the Act by issuing the August 5 warning against Boseman.

On December 17, 1990, Boseman was warned regarding work quality. Boseman was warned for improper procedure on his machine. Boseman testified that on the occasion in question he was not running the machine. Instead he was running some patches in accord with his supervisors' instructions. Boseman testified that he did not know who had started the machines. Boseman filed unfair labor practice charges over that incident. Supervisor Kevin Young told Boseman that he had to write up Boseman for some damaged cloth. When Boseman kept refusing to sign the writeup, Young said that the Company was out to get Boseman. Boseman testified that Young said, ''Look at your T-shirt. He said, it's an ACTWU T-shirt. So, you've been talking to people about the Union.'' Boseman told Young that he had not been talking to anyone. Young said, ''This plant will never be unionized organized.''

Young told Boseman that if he did not sign the writeup the Company would do another investigation and would probably terminate him.

Boseman eventually signed the writeup after Department Head David Ellis asked him to sign.

Kevin Young testified that he issued a warning to Boseman on December 17 because Boseman had incorrectly threaded cloth through a ring from the washer causing holes in the fabric. Young testified that when he told Boseman that he was issuing a warning, Boseman said he may as well get his things because this was his last writeup and he would be terminated. Young turned the matter over to his supervisor, David Ellis, when Boseman refused to sign the warning. Young denied that he told Boseman that the Company was out to get Boseman or that he told Boseman that the Company would investigate the matter and terminate Boseman.

Additionally, in the early morning of December 17, 1990, Kevin Young told Boseman that the employees could not communicate with each other at the machines because of the union thing. Boseman asked if that was just for him and Young said no, it went for everybody. As shown above I find that Respondent engaged in a violation of Section 8(a)(1) by that action in prohibiting employees from talking because they may be talking about the Union.

As mentioned above, although Young denied telling Boseman that he could not communicate with other employees because of the union thing. He admitted that he did tell Boseman not to leave his machine and bother other employees while they were operating their machines.

In line with my above mentioned findings as to credibility, I credit the above mentioned testimony of Boseman and, to the extent there is conflict, I discredit the testimony of Kevin Young.

On February 20, 1991, Boseman received a written warning for incorrectly punching the timeclock. This warning which did not involve work quality did not involve violative action by Respondent (see below).

Boseman was discharged on April 12, 1991. He and Nelson Artis were called into a meeting with David Ellis, Wydel Swenson, and Sammy Hines. Ellis said that 2300 yards of cloth had been damaged, that the damaged cloth was valued at $12,000 and that they would have to let Boseman and Artis go. Supervisor Wydel Swenson said that it was mighty funny how they had been running the cloth that long and no scuff marks had ever been seen and it was not right for the Company to write paperwork and fire Artis and Boseman. Ellis told Boseman and Artis they needed to see Dave Parsons. Boseman asked why since they had already been fired. Ellis responded that some times employees get out of hand and they should see Parsons the next Monday.

The evidence was not disputed that the damaged cloth ran on two shifts and that three of the six employees involved in running that cloth on the two shifts received disciplinary action. Nelson Artis and his counterpart on the next shift Douglas Baker, were both disciplined because they each failed to catch the defects even though they were in position to observe those defects. Respondent contended that Willie Boseman incorrectly threaded the lycra cloth and additionally, Boseman relieved Artis during the shift and should have observed the defect in the same manner as Artis should have observed the defects. Boseman denied both allegations that he improperly treated the cloth and that he relieved Artis. Instead, according to unrebutted testimony, the Supervisor Wydel Swenson relieved Artis during their shift.

Boseman's counterpart on the next shift, Ralph Barfield, was not disciplined after Barfield convinced management that he did not relieve Douglas Baker during the period while the damaged lycra cloth was running. Therefore Respondent determined that Barfield was never in position to observe the defect from the exit position and he was not disciplined despite the obvious fact that he, being in the entry level position, had the same opportunity to observe any defect in the way the cloth was threaded that Boseman had on the earlier shift.

Two employees, the middlemen on both shifts including Terry Kennon on the shift with Boseman and Artis, ran the cloth that was allegedly damaged but were not disciplined. Respondent determined that neither of the middlemen were in position to observe the defects in the lycra cloth. Only Boseman and Artis were discharged. Boseman testified that their supervisor, Wydel Swenson was present throughout the time they ran the cloth on the day in question—April 7—and that Swenson was helping them run the cloth. The evidence was uncontested that Wydel Swenson did relieve Artis

during the time of the running to the lycra cloth. However, Swenson was not disciplined because of the damaged cloth.

Swenson told Boseman that he had not seen scuff marks on the cloth and Boseman testified that he never did see any scuff marks.

According to Nelson Artis, Foreman Swenson told Artis that a large quantity of cloth that ran on April 7 was defective. Later that day Artis was included in a meeting in the finishing office with Supervisors David Ellis, Sammy Hines, and Wydel Swenson along with fellow employee Willie Boseman. David Ellis spoke. Ellis told Artis and Boseman that they had messed up two thousand some odd yards of cloth; that he had checked their records and because each of them already had two warnings for quality, they knew this meant their terminations. Foreman Wydel Swenson spoke up saying that he was with the crew the whole while, he had not seen anything on the cloth and did not think Boseman and Artis should get fired.

During operation of April 7, according to Artis' testimony, he relieved the middle man, Terry Kennon, during Kennon's break and Artis was, in turn, relieved for his break, by Foreman Wydel Swenson.

Sammy Hines testified that his job is that of print superintendent and that three department heads report directly to him. Each of those department heads supervise four supervisors. Some 150 or 160 employees work under the overall supervision of Sammy Hines.

Hines testified that the decision to discharge Willie Boseman and Nelson Artis occurred after quality control discovered that some 1300 yards of cotton lycra fabric had scuff marks. That resulted in the high quality material being downgraded. According to Hines it was determined that the damage to the cotton lycra resulted from the entry operator's action in operating the rope washer and determining the tension of the material. The entry operator at that time was Willie Boseman. Hines testified that the exit operator should have discovered the defects. That operator, Nelson Artis, was discharged for failing to discover and report the defects in the cotton lycra material. The middleman was not, according to Hines, in position to observe the defects. Therefore, it was decided that the middleman should not be disciplined. Hines was asked on cross-examination if the middle man could not see through the cloth while it was spread out and running through his section. Hines replied that he did not know about that but that he did know that the middle man was looking at the back of the cloth.

On cross-examination Hines admitted that the cotton lycra continued to run on the following shift and that none of the employees on that shift were disciplined. Hines testified that it was his recollection that all the damage occurred during the middle of Boseman and Artis' shift and that no damage resulted while the cloth was running on the following shift. Hines admitted that he was not aware that either of the two operators that replaced Boseman and Artis on the following shift,—Douglas Baker and Ralph Barfield—supported the Union. Hines admitted that he did not talk with Baker or Barfield in investigating the incident of the damaged lycra.

Supervisor Kevin Young testified contrary to Print Superintendent Sammy Hines that the lycra cloth in question was run on both shifts and that he prepared written warnings for Douglas Baker and Ralph Barfield because some of the damaged cloth ran on their shift. Barfield complained that he had not given the breaker a break on the shift in question and Young turned the matter over to his Supervisor David Ellis who determined to not warn Barfield because Barfield did not relieve the exit operator. Instead Barfield remained on the entry position throughout the time of the running of the lycra fabric. Barfield remained in the position comparable to that of Willie Boseman on the day shift.

There were several conflicts apparent in the testimony by Respondent's supervisors involved in the discharge of Willie Boseman.

Sammy Hines was asked if Supervisor Wydel Swenson spoke in defense of Boseman and Artis during their termination interview. Hines denied that Swenson had said that he had been with Boseman and Artis and that he did not see any scuff marks. Hines said that he did not recall Wydel Swenson being in the meeting. Hines admitted that if the supervisor had filled in for the operators while damaged cloth was running then the supervisor should be disciplined along with the employees. Hines admitted that the supervisor, Wydel Swenson, was not disciplined on the occasion of the discharge of Boseman and Artis.

Hines testified that it is company policy to take disciplinary action only in those instances where it can determine fault. In situations where it cannot be determined which employee caused damage, then none of the operators are disciplined. According to Hines they have never disciplined all three operators because of quality problems similar to the one for which Boseman and Artis were fired.

Supervisor Kevin Young testified that the practice was to issue warnings to all three operators in instances where cloth is damaged but it cannot be ascertained which employee caused the damage.

Supervisor David Ellis, who was present during the terminal interview, admitted that Supervisor Wydel Swenson spoke in defense of Boseman and Artis.

Supervisor Wydel Swenson who was available to testify, having continued to work for Respondent, did not testify. Swenson did not deny that he relieved exit operator Artis during the running of the lycra cloth nor did he deny that he told Sammy Hines that he was with Boseman and neither he nor Boseman observed scuff marks in the lycra or that he spoke up during the terminal interview protesting that neither Boseman nor Artis deserved disciplinary action.

Findings

The record supported a finding of a prima facie case as to the discharge of Willie Boseman.

As shown above Respondent was well aware of Boseman's prounion activities and had taken actions against Boseman because of his union activities.

The credited evidence proved that Boseman's supervisor, Kevin Young, told him that the Company was out to get him because of his union activities and especially that Boseman was wearing a union tee-shirt and that Young told Boseman that the Company would probably conduct another investigation and fire Boseman.

As to his termination, the record shows that Boseman was treated disparately.

Boseman was the entry operator on one of two shifts that ran the defective lycra cloth. Although Respondent contends that Boseman was at fault in permitting the cloth to run from his position with excess tension, the entry operator on the

next shift, Ralph Barfield, had the same responsibilities regarding running the machinery and he had the same opportunities to correct the tension problem. Barfield, unlike Boseman, was not disciplined.

Respondent also contends that Boseman, unlike Barfield, relieved the exit operator for a break, while the damaged cloth was being run. However, Boseman contended that Artis was relieved by the Supervisor Wydel Swenson during the running of the lycra. Boseman contended that he did not relieve Artis after the morning of April 7. Swenson did not testify. I credit Boseman's testimony in that regard even though Supervisor David Ellis testified that he observed Boseman operating the exit position on April 7 and that Boseman by signing the ticket for the lycra cloth illustrated he was acting as exit operator. Boseman denied that the signature on the ticket was his. Regardless of my determination of the conflict between Ellis and Boseman as to whether Boseman relieved Artis, the question remains as to why Wydel Swenson who relieved Artis during that operation, was not treated in the same fashion as Boseman. Nevertheless, I am convinced that Boseman was a truthful witness and I credit his testimony and discredit the conflicting testimony of Ellis. Ellis' testimony differs in many respects from that of other witnesses including Superintendent Sammy Hines. For example Hines recalled there was 1300 yards of damaged lycra cloth while Ellis recalled the damaged cloth involved 2300 yards.

In view of the above, I find that Boseman was treated differently than Ralph Barfield even though both conducted the same job while damaged lycra cloth was being run. Moreover, there was no showing as to why Boseman was not treated in the same fashion as the two middle operators who were not disciplined or why he was not treated in the same fashion as the supervisor, Wydel Swenson, who relieved the exit operator. None of those people, other than Boseman, was disciplined.

Additionally I find that Respondent failed to prove that Boseman would have been disciplined in the absence of his union activities. The record shows that other employees that performed the same duties as Boseman on the damaged cloth, were not disciplined and Respondent failed to explain that disparity. *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); *NLRB v. Transportation Management Corp*., 462 U.S. 393 (1983); *Delta Gas*, 283 NLRB 391 (1987), enfd. 840 F.2d 309 (5th Cir. 1988); *Southwire Co. v. NLRB*, 820 F.2d 453 (D.C. Cir. 1987); *Yaohan of California*, 280 NLRB 268 (1986).

As to the 8(a)(4) allegation, the record showed that the Union filed a charge on March 9, 1990, involving among other things, an incident on January 29 wherein Boseman was prohibited from distributing union leaflets. In view of the fact that Boseman was the only employee involved in the distribution, it is apparent that Respondent was aware that he had given evidence in that charge. Therefore I agree with the General Counsel that Boseman's discharge violates Section 8(a)(4) as well as Section 8(a)(1) and (3).

2. Nelson Artis

Nelson Artis was discharged in the same incident which resulted in the discharge of Willie Boseman on April 12, 1991.

Artis was the glue dryer operator. He had worked for Respondent since January 11, 1989.

Unlike Boseman, Artis did not engage in substantial union activity. He testified that his attendance at two union meetings was his only union activity. Artis admitted that Respondent was unaware that he engaged in any union activity.

According to Artis, he had received two prior warnings related to production before the April 7 incident involving Boseman, Artis, Terry Kennon, and Foreman Wydel Swenson.

Artis testified that before April 7, it was Respondent's practice to award a warning to each member of a crew that was responsible for a mistake unless it was possible to determine with precision which employee was responsible for the mistake. On April 7 only Boseman and Artis were punished. Neither Terry Kennon nor Foreman Swenson received disciplinary action.

On April 12 Foreman Swenson told Artis that a large quantity of cloth that ran on April 7 was defective. Later that day Artis was included in a meeting in the finishing office with Supervisors David Ellis, Sammy Hines, and Wydel Swenson along with fellow employee Willie Boseman. David Ellis spoke. Ellis told Artis and Boseman that they had messed up 2000 some odd yards of cloth; that he had checked their records and because each of them already had two warnings for quality, they knew this meant their terminations. Foreman Wydel Swenson spoke up saying that he was with the crew the whole while, he had not seen anything on the cloth and did not think Boseman and Artis should get fired.

Artis testified that he was the exit operator, Boseman was the entry operator and Terry Kennon was the middle man in the crew on April 7 and that all three of them were responsible for observing any defects. Artis testified that middle man Terry Kennon should have been able to observe any scuff defects on the cloth while the crew was operating on April 7. However, only Boseman and Artis were punished because of the April 7 incident.

During operation of April 7, according to Artis' testimony, he relieved the middle man, Terry Kennon, during Kennon's break and Artis was, in turn, relieved for his break, by Foreman Wydel Swenson.

Findings

The evidence does not support a prima facie case regarding the discharge of Nelson Artis.

Unlike Boseman, there was no showing that Respondent was aware that Artis was a strong union advocate. In fact, Artis was not a strong union advocate. By his own testimony as shown above, his union activity was not remarkable. There was no showing that Respondent was even aware of how Artis felt about the Union. In that regard I disagree with the General Counsel that Respondent illustrated knowledge of Artis' union position by telling him not to talk in fear that the talk may involve the Union.

Moreover, unlike the situation with Boseman, there was no showing that Artis was treated with disparity. Both Artis and his counterpart on the next shift, Douglas Baker, received warnings for the same alleged infraction.

Additionally, the evidence does not support a finding that Artis was discharged in order to support the discharge of Boseman. As shown above, Artis was the exit operator and

any showing of shortcomings by the exit operator would not reflect on action against anyone other than that operator. Although there was testimony by David Ellis that Boseman relieved Artis during his shift, that evidence which was discredited, was not critical to a determination that Boseman's discharge was justified.

I find that the General Counsel failed to show that Respondent was motivated to discharge Artis by its employees' protected activities.

3. Douglas Horne

Douglas Horne worked for Respondent as a materials handler in the warehouse when he started on July 16, 1986. In August 1988 Horne became a sample clerk in the warehouse department. He worked in the main plant for 2 years until the sample clerk job was eliminated and he again became a materials handler. He then worked at the Grey Warehouse until his discharge on November 5, 1990.

Horne filed unfair labor practice charges over the abolition of his sample clerk job during the summer of 1990. That charge was dismissed.

Horne was active in the union campaign. He wore union buttons and stickers, attended union meetings, talked to employees at their homes, and passed out union leaflets at the main gate.

Willie Boseman testified that Douglas Horne also passed out leaflets in support of former employee Ina Mae Best.

Horne testified that he and employee Greg Lewis had a conversation with Supervisor Debra Gillespie about the Union in February 1990 while at work in the breakroom. Gillespie asked Horne why he was wearing a union button. The button said, ''Workers Want Fairness.'' Horne replied to Gillespie, that he wanted fairness too. Gillespie told him that she wished he would take the button off.

On November 5, 1990, Horne was called into a meeting with Dave Parsons and Jeff Cunningham. Parsons gave Horne copies of two magazine subscription forms and asked if Horne had filled in those forms which were orders for subscriptions for *Ladies Home Journal* and *Redbook*. The forms indicated the subscriber as ''Ina S. Friends, Goldtex Co.'' Horne denied that he had filled in the forms which indicated that the subscriber should be billed.

Dave Parsons told Horne that he believed that Horne was the person that had filled out the subscription forms and that he was suspending Horne until a handwriting analysis was secured to determine whether Horne had completed the subscriptions.

On November 12, 1990, Horne met with an investigator, Dave Grimes, in Persons' office at the plant. Horne testified that Grimes told him that the Company thought Horne had subscribed to the magazines in the Company's name and Grimes told Horne that he was subject to as many as 3 years' imprisonment and like a $1000 fine because that was a felony for mail fraud.

On December 18 Horne met with Parsons in Parsons' office. Parsons told Horne they had secured a handwriting analysis that said the handwriting on the subscription forms was Horne's and that Horne was terminated effective November 5. Horne asked for a copy of the report. Parsons told him that he could not have a copy of the handwriting analysis.

Horne also met with Detective Rick Sutton of the Goldsboro police department. Sutton told Horne that Respondent wanted to prosecute him for filling out the magazine subscriptions. Horne told Sutton that he had not filled out the subscriptions and that he felt Respondent's handwriting analysis was in error. At Sutton's request Horne supplied him with samples of Horne's handwriting.

Detective Sutton testified that he forwarded material including copies of the magazine subscriptions and handwriting samples provided by Douglas Horne, to the North Carolina State Bureau of Investigation. Subsequently the State Bureau of Investigation submitted a report to the Goldsboro police that the Bureau could not determine whether the subscription handwriting matched the handwriting of Douglas Horne. Sutton testified that the investigation was now in an inactive status.

David Dunn of the North Carolina State Bureau of Investigation, testified that he was the employee that investigated the allegations regarding the magazine subscriptions. He compared the copies of the magazine subscriptions against samples of Douglas Horne's handwriting. The samples of Horne's handwriting included a sheet prepared by Horne at the request of the Goldsboro police plus two sheets of his handwriting taken from Respondent's records. Accordingly one of those samples was prepared by Horne after he knew he was under investigation. However, the other two documents were writings of Horne made at times when he was not under investigation.

Dunn testified that the Bureau routinely resists giving opinions based on copies of writings but that the Bureau may give a qualified opinion such as it is highly probable or it is probable that a person is the author. Dunn reported there were enough similarity between Horne's handwriting and the subscription copies to warrant a request for the original subscriptions. However, Dunn never did receive the originals. He determined that the evidence which included only the subscription copies, was insufficient to justify an opinion as to whether Douglas Horne had written the magazine subscriptions. According to Dunn, even though there were similarities between Horne's handwriting samples and the subscriptions, there were also differences.

According to Dunn, copies do not permit examination of pressure applied to make particular letters and since that examination is critical to complete handwriting analysis, the Bureau routinely resists rendering opinions where only copies are available for analysis.

Respondent defended the allegations regarding the discharge of Douglas Horne by showing that in October, November, and December 1990, it received magazines which it had not purchased including *Redbook, Good Housekeeping, Ladies Home Journal* and *US News*. On inquiry to the publishers, Respondent was supplied with copies of subscriptions to *Redbook* and *Ladies Home Journal*. Despite its requests for originals, Respondent received only photocopies of those subscription forms which were received in evidence.

Respondent had not authorized the purchase of subscriptions to the magazines mentioned above. Lisa Musselman who handled accounts payable for Respondent, testified that upon learning that Respondent was receiving the magazines and receiving an invoice for payment on the subscription for *Ladies Home Journal*, she canceled all the unauthorized subscriptions and requested that Respondent be sent the original

subscription applications. Musselman received copies only of the subscriptions to *Redbook* and *Ladies Home Journal*. Upon examination Musselman felt that she recognized the handwriting of Douglas Horne on those subscriptions. Before that time Musselman routinely reviewed logs of the receipt of express deliveries which were prepared by Douglas Horne in the normal course of his work for Respondent.

Lisa Musselman reported to her supervisor that she felt the handwriting on the subscriptions was Douglas Horne's. At the directions of her supervisor, Musselman pulled files showing Horne's entries in logs and compared those writings to the writing on the subscriptions. She showed her supervisor those writings and both Musselman and the supervisor, Jo Gurley, testified that they believed that the writing on the subscription applications was Douglas Horne's.

On cross-examination Jo Gurley testified that Respondent discharged employee Ray Massey for misappropriation of funds. Respondent did not seek to prosecute Massey who was accused of misappropriating what Gurley recalled as at least a couple of thousand dollars.

Douglas Horne was eventually confronted by Respondent as to whether he had written the subscription requests for Respondent to subscribe to the five disputed magazines. Horne denied that he had written the subscription requests.

Respondent employed Investigator David Grimes to look into the matter and Grimes interviewed Douglas Horne. Horne denied that he had written the subscription requests.

John P. Roggina testified that he was contacted by David Grimes. Roggina testified that he is a handwriting expert and that he has testified in court as an expert in that field. At his request Roggina was supplied with copies of the disputed subscription requests along with samples of Douglas Horne's handwriting. Roggina testified that he positively identified the disputed writing as that of Douglas Horne and that Respondent was advised of his conclusions. Roggina testified that the matter of the magazine subscriptions and Douglas Horne, was one of two matters that he was requested to investigate on behalf of Respondent.

Roggina agreed that it is the policy of the North Carolina State Bureau of Investigation to refuse to give an opinion in handwriting comparison cases because of the difficulty in determining pen pressure on copies. However, Roggina testified that he frequently renders opinions despite the fact that one or more of the comparison documents is a copy. Roggina testified that he renders opinions in those situations where he is confident of his opinion despite the fact that one of the comparison documents is a copy.

On cross-examination Roggina was shown samples of Horne's handwriting and the copies of the magazine subscriptions. Roggina testified to what he considered similarities and he testified that the only differences he notices were differences in size.

Findings

In determination of this issue I shall follow the Board's procedure of first questioning whether the evidence supports a prima facie case that Respondent was motivated to discharge Douglas Horne because of his protected activities and, secondly, if I should find a prima facie case has been established, I shall question whether Respondent would have discharged Horne in the absence of protected activities. *Wright Line*, 251 NLRB 1083, enfd. 662 F.2d 899 (1st Cir.), cert. denied 455 U.S. 989; *NLRB v. Transportation Management Corp*., 462 U.S. 393; *Delta Gas*, 283 NLRB 391, enfd. 840 F.2d 309 (5th Cir.); *Southwire Co. v. NLRB*, 820 F.2d 453 (D.C. Cir.); *Yaohan of California*, 280 NLRB 268.

The record does offer support for the General Counsel having proven a prima facie case as to Douglas Horne's discharge. As shown herein, the General Counsel proved animus by proving that Respondent engaged in numerous incidents of violations of unfair labor practice prohibitions.

Respondent was aware of Douglas Horne's prounion position and some of his prounion activities. Additionally Respondent was aware that Horne had filed an unfair labor practice against it in the summer of 1990, alleging that Respondent had illegally abolished his former job as sample clerk.

However, despite that evidence there remains an issue of whether Respondent was motivated to discharge Horne because of his protected activities.

Respondent contends that it discharged Horne because it was convinced that Horne had ordered subscriptions for several magazines on behalf of Respondent without authority.

Apparently, either as a joke or in spite because of hard feelings against Respondent, someone had ordered subscriptions in Respondent's name from five magazines.

When Respondent discovered that it was receiving subscriptions it had not ordered, the matter was assigned to accounts receivable clerk Lisa Musselman. Musselman testified that she contacted all the magazines and canceled the subscriptions. Musselman informed each magazine that the subscriptions had not been authorized by Respondent. Musselman also requested that Respondent be supplied with the original subscriptions for the purpose of investigating how the subscriptions started.

Lisa Musselman testified that when she first looked at the subscription copy immediately upon receiving it in her office, she thought she recognized the writing as that of Douglas Horne. Lisa Musselman was familiar with Horne's writing. She had routinely reviewed Horne's log of receipt of courier deliveries, while Horne worked for Respondent as a sample clerk.

I was impressed with the demeanor of Lisa Musselman. She appeared to testify candidly. I credit her testimony.

Musselman's testimony was, of course, not rebutted. That testimony, and the other evidence showing that Respondent did actually receive unauthorized mailings from the five magazines in question, proved without rebuttal, that a problem developed during the fall of 1990 regarding Respondent receiving magazine subscriptions.

Additionally, there was no rebuttal to evidence showing that Musselman compared the subscription copies with samples of Douglas Horne's handwriting found in Respondent's records, after being directed to make those comparison by her supervisor, Jo Gurney. I credit that evidence along with the testimony of Jo Gurney that she became convinced that the subscriptions were written by Horne after Musselman showed her the logs along with the subscription copies.

Shortly thereafter Douglas Horne was confronted with Respondent's concern with whether he had subscribed to the magazines on Respondent's behalf. Personnel Director Parsons interviewed Douglas Horne regarding that issue. After Horne denied that he had forged the subscriptions, he was suspended pending further investigation.

In view of Horne's denial that he had written the subscriptions, Respondent decided to both report the incident to the police and, to investigate the matter on their own accord.

Upon complaint from Respondent, an investigation was conducted by the Goldsboro, North Carolina, police that involved an interview with Douglas Horne. Horne again denied that he had forged the subscriptions. The Goldsboro police then referred the matter to the North Carolina Bureau of Investigation. There a handwriting comparison was conducted involving the subscription copies and known samples of Douglas Horne's handwriting.

The Bureau of Investigation determined in accord with their usual procedure that they could not competently determine that Douglas Horne had written the subscriptions. The Bureau of Investigation determined that they could not determine whether or not Horne had written the subscriptions because they were provided with only copies of the magazine subscriptions and copies do not provide them with sufficient opportunities to examine pen pressure. The evidence showed that the magazines told Respondent that they could no longer provide the original subscriptions.

Respondent also employed a private investigator for two matters involving possible employee forgery and that investigator, David Grimes, interviewed Douglas Horne. Again Horne denied that he had written the subscriptions. Subsequently, Grimes turned the sought the assistance of a known handwriting expert. He had heard that John Roggina did that type of work and he contacted Roggina. Both the matter involving Horne and another matter involving another employee were referred to Roggina for handwriting comparisons. As to the magazines, Roggina was asked if he could determine if Douglas Horne had written the subscriptions.

I credit the above evidence. In substantial part it is not rebutted. Moreover, other than the question of did Douglas Horne actually forge the subscriptions, there was little conflicts in the testimony.

Roggina submitted a report to David Grimes that in his opinion Douglas Horne did forge the magazine subscriptions. On the basis of that report, Respondent discharged Douglas Horne.

It is not my job to determine whether Douglas Horne forged the magazine subscriptions and I specifically avoid making that decision. What I must determine is whether Respondent discharged Horne because of his protected activities. In order to make that determination I must find that Respondent's asserted basis for Horne's discharge was pretextuous.

The evidence does not show that Respondent's asserted basis for the discharge of Horne was pretextuous. Despite Respondent's awareness of the unwillingness of law enforcement officials to bring criminal charges against Douglas Horne, it was also aware that the Bureau of Investigation did not determine that Horne had not forged the magazine subscriptions.

On the other hand, Respondent was presented with a finding of a person known to be a handwriting expert, giving his opinion that Horne had forged the subscriptions. I am unable to find that evidence was insubstantial nor can I find that Respondent should have realized that Roggina's report was incorrect.

I observed the testimony of Roggina and I am unable to determine that he was untruthful.

Here, it is important to keep in mind that the General Counsel bears the burden of proving that Respondent was motivated by Horne's protected activities in discharging him. This is not a situation such as is the case when an employee is discharged because he allegedly engaged in misconduct while engaged in protected activity. cf: *Rubin Bros. Footwear*, 99 NLRB 610 (1952); *NLRB v. Burnup & Sims*, 379 U.S. 21 (1964); see also *Clear Pine Moldings*, 268 NLRB 1044 (1984); *Freight Movers*, 292 NLRB 633 (1989).

Here there is no contention that the writing of magazine subscriptions involved protected activities. Therefore the General Counsel bears the burden of proving that Respondent did not reasonably believe that Horne forged the magazine subscriptions. The General Counsel failed to satisfy that burden.

Therefore the record failed to show that Respondent was motivated to discharge Douglas Horne because of Horne's union activities. The record illustrated that Respondent discharged Horne because of its belief that he forged magazine subscriptions. In view of that evidence I must find that the General Counsel failed to prove its allegations regarding the discharge of Horne.

4. Derek Burden

The General Counsel alleged that Derek Burden was illegally discharged on December 17, 1990.

Derek Burden started working for Respondent in November 1987. During the union campaign he wore union buttons to work, wore a union T-shirt, passed out union leaflets and talked to other employees about the Union.

Burden testified that in December 1989 or January 1990, he, along with Mark Rowe told Supervisor Wanda Dawson that they were involved in union activities. Dawson responded that she did not care. On cross-examination Burden testified that conversation probably occurred in January 1990 during the second week of that month, most probably after January 10.

Burden received a warning for being out of his work area on January 24, 1990. As shown below, I find that warning was issued Burden because of his union activities and constituted a violation of Section 8(a)(1) and (3) of the Act.

On December 4, 1990, Derek Burden received a warning for allegedly failing to maintain productivity standards. Supervisor Wanda Dawson issued that warning, which follows:

> In August of 1990 conversations were documented on Derek concerning his below standard performance. At that time goals were established and he was told his performance would be monitored. In September he was meeting the established goals, and was advised that we would expect him to continue to meet these goals. Then in October his efficiency started dropping off, at which time we were doing some training of new employees. In the past (3) three weeks Derek's main responsibility has been to write approvals and his efficiency continues to drop. Even with the duties of filing, writing purchase orders, receiving reports, writing strike off request and typing screen reports being taken away he is operating at a 75% efficiency. This level of productivity is not acceptable.
>
> An immediate improvement to the previously established goals or better must occur. A (unclear) of

> progress will be made Monday Dec 10th, failure to reach established goals will result in a second warning. Warnings will be issued at any period the goal is not maintained.
>
> Dereks comments are up until Nov 4th he'd took part in training Ginger Wellington. I understood she is doing all the filing and paper work [unclear], but I have had to help her and train her which takes time from my other responsibilities. Taking part in the training of Ginger was a responsibility given to me by my supervisor. I spent a lot of time training her while Wanda and Herb were on vacation, which resulted in the lowering of my efficiency. I am still having problems with customers and have discussed these problems with Wanda.
>
> Employee signature Derek Burden
> Date 12/4/90
> Place-Lab & Strike Off Office

Derek Burden agreed that in his job as formula technician in the print lab, he was given a weekly production standard during August 1990. On cross-examination Burden testified that during August he believed the standard was 48 patterns, 53 combinations, and 11 strikeoffs. Subsequently the standard was set at 48 patterns, 68 combinations per week. He explained that a pattern involves making up a number of screens necessary to form a design. Each screen involves one color and the pattern includes all the screens necessary to make up a design where the design may include several colors. A combination involves using patterns to form a particular color which may require a combination of base colors, red, blue, and yellow.

Burden testified that there was a dramatic pickup in the business to the point where during August 1990, he could not keep up with the work. It was at that time that Wanda Dawson first came to him and gave him a production standard.

Respondent through Supervisor Wanda Dawson, offered documents regarding Burden's productivity. Included was the following document dated July 10, 1990:

> Below standard job efficiency. On 7/10/90 this conversation was held with Derek to discuss his present job efficiency level, and what improvements will be required within the next two (2) weeks. Records show that Derek is writing approvals for an average of 25.1 patterns, 36.1 combinations per week. The two (2) previous employees in this job averaged 33 patterns—49 combinations per week, plus wrote up all strike-off request pitch sheets in addition to other duties.
>
> Within the next two (2) weeks by (7/21/90) we expect Derek to be averaging 33 patterns—49 combinations of approvals per week. At the end of these two (2) weeks we will discuss his progress and a time period in which we will expect him to be able to write up strike off request pitch sheets, which is a part of his job.

Then on July 24, 1990, Wanda Dawson wrote the following:

> Follow up on efficiency results. On 7/10/90 a conversation was documented on Derek concerning his low efficiency. During this two (2) week period he has improved on writing approvals from 33 patterns, 49 combinations to 34 patterns (62) combinations per week. At this rate Derek should be able to get caught up on approvals within two (2) weeks (By 8–4–90) at which time he is to pick up his other duties, (such as writing strike off spec sheets) and stay caught up in other areas of responsibility.
>
> Another follow up will be made in two (2) weeks, (8/7/90).

Then on August 17, 1990, Dawson wrote:

> On 7/10/90 and again on 7/24/90 conversations were conducted with Derek concerning his low efficiency. After the first conversation on 7/24/90 Derek was able to meet the goal established for writing approvals. At this time he was told (in the second conversation) that at this rate of improvement he should be able to catch up on approvals and be able to assume his other job duties in two weeks. After three weeks he has not only been unable to catch up on approvals he has dropped below the original goal established for number of approvals to be written.
>
> This level of efficiency is not acceptable.
>
> Beginning 8/20/90 through 9/1/90 (two weeks) the following goals are established. He is to complete 46 patterns 68 combinations of approvals and a minimum of 10 (ten) strike off request per week. Failure to reach these goals may result in disciplinary action.

Then on September 6, 1990, Wanda Dawson wrote:

> Follow up on efficiency. On 8/17/90 a follow up conversation was documented on Derek concerning his job efficiency. At this time new goals were established that would bring his efficiency in line with that of two (2) previous employees in this job.
>
> For week ending 9/1/90 Derek was able to meet the established goal, and perform other duties in his job. This level of productivity is required of Derek and will be monitored on a weekly basis to be sure it is maintained.
>
> W/E 9/1/90 approvals 49 patterns 56 combinations strike off spec sheets eleven (11).

Department Head Herbert Johnston testified that he went back and researched what past formula technicians had done in their job when it became apparent that Derek Burden was unable to keep up with his work. Over an 11-week period in the first of 1989, Johnston determined that Formula Technician Wanda Dawson had averaged 32 patterns and 52 combinations per week. During that period Dawson had a low weekly total of 24 combinations and 18 patterns and a high weekly total of 82 combinations and 52 patterns.

Johnston also checked the production of Formula Technician Belinda Smith for a 9-week period in April and May 1989. Smith averaged 34 patterns and 46 combinations per week with a low of 22 patterns and 27 combinations during the week ending April 8, 1989, and a high of 43 patterns and 59 combinations during the week ending May 13, 1989.

In October 1990, Burden was assigned the extra task of training new employee Ginger Wellington. For the first 2, 3 weeks after he was assigned that task, according to Burden, he was the only one involved in training Ginger Wellington because first, department head Herb Johnston was on vacation. During that time Supervisor Wanda Dawson took over Herb Johnston's work in addition to her own work, and she was not available to help train Wellington. Then Wanda Dawson was out on vacation. The effect was that Wanda Dawson was unavailable to help train Ginger Wellington until Dawson returned from her own vacation.

When Burden was given the December 4 warning he told Supervisor Wanda Dawson that his drop in production was caused by his spending time to train Ginger Wellington.

Wanda Dawson told Burden that he would be re-evaluated on December 10. Burden admitted that on December 4 he was relieved of the responsibility of training Ginger Wellington.

On December 10 Burden received another warning. That warning included the following comments:

> On 12/4/90 Derek was issued a warning for below standard work performance and was told immediate improvement must be accomplished. Derek was previously given a goal to write 68 combinations for approval. This goal was also in conjunction with writing 10 strike offs. The requirement of writing strike offs was subsequently removed from his duties, therefore an increase in the number of combinations approvals should have resulted. On w/e 12/9, with only approvals required to be written Derek only completed 68 combinations.
>
> Although this met the requirement as previously set it does not meet the required level of production when only approvals are done therefore, Derek is being given a second warning for (unclear) job performance.
>
> The stated efficiency for writing pattern approvals is 1.5 combinations per hour. The total number of approvals required in any given week is directly in proportion to the number of hours worked. Failure to maintain this weekly average will result in further disciplinary action as stated in our Company policy.
>
> Dereks comments:
>
> During the week of 12/9/90 while all other duties were removed including writing strike offs, I was required to meet an established goal of 48 patterns, 68 combinations. During this week I not only met this goal but increased from 48 to 53 patterns 68 combinations.

Burden testified in line with his above comments on the December 10 warning, that he exceeded his production goals during the week ending December 9 by producing 53 patterns and 68 combinations.

Derek Burden also testified that he was never told that his standard was 1.5 combinations per hour. Instead he was told of weekly standards which were never broken down for him, to a particular number per hour.

Supervisor Wanda Dawson was asked about approvals, how long does it take. She responded:

> Well, it actually depends on how many screens are involved, how many colors were involved—you know, how many combinations there are. I would say if you had a pattern that had five combinations and 12 screens in that pattern, it would take, I would say a good hour or more to do.

Derek Burden asked to be permitted to go over his personnel file after receiving the December 10 warning. However, evidently because the Director of Human Resources Dave Parsons was absent from work, Burden was not permitted to go over his file until December 17. During the week before December 17 Burden ran out of work and was told to go home on December 13.

When Burden returned to work on December 17, 1990, as directed by Wanda Dawson he was told that he would be able to review his personnel file with Dave Parsons. However, when he met with Parsons he was fired. The reason stated on his termination form was ''poor work performance.'' That document included the following comments:

> Job performance
>
> On 12/11/90 a written warning was documented on Derek for below standard job performance. At that time all job duties other than writing pattern approvals were removed from Derek and it was explained that 1.5 combinations per hour would be the standard required in this job.
>
> During the week ending 12–16–90 he worked a total of 28.25 hours and completed 32 color combinations plus 5 partials, which does not meet standard. This calculates to be 1.3 combinations per hour giving full credit for the partials. Also during this week 1-1/2 hours was spent in meeting and 1 hour checking approvals written by another employee, after giving credit for these hours his average is 1.4 combinations per hour.
>
> Since this is the third warning issued in a 12 month period all relating to job performance the employee is being terminated as stated in Company policy.

Burden testified that he was not shown the above document. Instead Dave Parsons told him that he was going to go over Burden's file with him, that Burden had received three warnings in a 12-month period which were grounds for termination and that Burden was terminated because he had not met the production standard for the week before. Burden responded there must be some mistake. Burden explained that he had not had enough work to keep him busy the week before, that he had completed all the work and had been sent home because there was no work left.

After leaving Parsons' office with Wanda Dawson, Derek Burden showed Dawson his production log. Burden testified that he counted the combinations in front of Wanda Dawson and pointed out that showed that he had produced more combinations than he was being credited with. Wanda Dawson closed his book and said she would look into the matter after he left. Burden heard nothing further from Respondent.

Respondent called current Formula Technician Ginger Wellington who was originally employed on October 22, 1990. Wellington was trained by Derek Burden and Supervisor Wanda Dawson. Wellington admitted that she does not have specific production standards at present but that she was expected to do all the work assigned to her. There are currently two formula technicians on the first shift as opposed to only Derek Burden during August 1990.

Findings

I find that the General Counsel proved a prima facie case regarding the discharge of Derek Burden.

In making that determination I credit the testimony of Derek Burden. Burden appeared to testify candidly and demonstrated good demeanor. Moreover, as to the testimony against him, I was not impressed with the demeanor of Wanda Dawson. In many areas it appeared that Dawson was uncomfortable with her answers. Additionally there were areas of obvious discrimination against Burden which were never explained. For example he was the only formula technical that was subjected to standards of performance. As shown above Ginger Wellington admitted that she does not work under a standard of performance. In view of those factors and the full record I credit Burden and do not credit the testimony of the witnesses that testified against him regarding Burden's discharge.

The record illustrated that Derek Burden was an obvious union supporter to the point of telling Supervisor Wanda Dawson of, his position. That testimony which was unrebutted, is credited.

As shown below, shortly after Burden told his supervisor of his support for the Union, he was illegally awarded a warning for being out of his work area.

In July 1990, Burden was told that he must maintain production standards. Burden was the only formula technician on his shift at that time even though the record shows that Respondent routinely used two formula technicians on each shift. Beginning in July the standards Burden were expected to maintain were allegedly set by use of production records of two employees set while the two of them were working together as formula technicians. Moreover, as shown by the testimony of Department Head Johnston, Burden was required to maintain no less than the weekly average production even though the records of previous technicians used to set Burden's standards, illustrated that their records were sometimes lower and sometimes higher than the average. As an example, Johnston testified that one of the employees' records he used was the production records of Wanda Dawson, who became Burden's supervisor, and that Dawson's records revealed a low weekly production of 24 combinations, 18 patterns even though her overall weekly production averaged 32 patterns, 52 combinations.

Supervisor Wanda Dawson testified at length regarding the importance of the job of formula technician which was formerly held by Derek Burden. In essence Dawson pointed out that the quality of that work was extremely critical. However, as to Derek Burden, as shown above, none of the disciplinary action taken against him involved poor work quality.

The complaints against Derek Burden involved productivity.

According to both Burden and Supervisor Wanda Dawson, the work was backing up in August 1990. Derek Burden was unable to keep up. Burden testified, and Wanda Dawson's testimony supported Burden in that regard, that more work was coming in from customers to the point that Burden was unable to handle the increase. Burden testified that it was that increase in work, not a decrease in his productivity, which caused the back up in work.

Subsequently, in the fall, Respondent added to Burden's job duties by assigning him the job of training a new hire, Formula Technician Ginger Wellington. Burden testified without rebuttal that initially he was the only one involved in Wellington's training due to first the department head, then the supervisor, going on vacation.

Supervisor Wanda Dawson testified there were two formula technicians in early 1990. In December 1989 Respondent hired Marianna Elliott. Elliott was trained as formula technician by Derek Burden according to the testimony of Wanda Dawson. Dawson testified that Marianna Elliott worked for only 3 or 4 months, maybe longer.

Subsequently, on August 17, 1990, while Burden remained the only formula technician on his shift, his production standards were increased from the original standard or 33 patterns, 49 combinations per week to 46 patterns, 68 combinations per week. There was no showing that that increase was based on any determination regarding past performances by other formula technicians.

In October Burden was given the additional assignment of helping train a new formula technician, Ginger Wellington. While Burden was performing his job and training Ginger Wellington, he received the December 4, 1990 warning for allegedly failing to maintain the production standards which had been set in August.

At the time of his warning on December 4, Wanda Dawson told Burden that his performance would be reviewed on December 10 and that his work would be limited to approvals. The established goal for approvals was 68 combinations per week.

Burden achieved 68 combinations during the week ending December 9. Nevertheless, on December 10, Burden received another warning for low production. As shown above the written warning showed that Supervisor Wanda Dawson decided to increase the standard to something more than 68 in view of Burden's work being limited to approvals only during the week ending December 9. Burden had not been advised of an increase in standards before December 10. Wanda Dawson never did specify what that new standard was other than showing on the warning itself that 68 combinations was insufficient.

The above shows that after Respondent learned that Derek Burden was a strong union supporter he received an illegal warning for being out of his work station; subsequently production standards were set for Burden's performance which did not allow for deviation below the standard in the manner permitted previous formula technicians; subsequently those production standards were substantially increased; then during a period when Burden was given the added duty of training a new employee, he received another warning for below standard production; and, finally, on December 10 Burden received his final warning even though he achieved the production standard set by Respondent. The supervisor claimed that Burden should have done even better because some of his duties were removed.

When confronted with the December 10 warning Burden asked to review his record. Before that could occur Burden was sent home during the week of December 16 because he ran out of work.

However, when Burden returned the following week he was discharged and, as shown above, his failure to achieve production levels during the December 16 week was mentioned even though it was not denied that he had been sent home because there was no work.

Respondent never explained how it could hold Burden to work standards when there was not enough work for him to perform.

In view of the record I find that the warnings issued to Burden during August and December were illegally motivated by Respondent's animus against Burden's union activities. Respondent failed to show that any other employees were ever required to meet increasingly difficult work standards or to otherwise prove that Burden would have received those warnings in the absence of his union activities. *Wright Line*, 251 NLRB 1083, enfd. 662 F.2d 899 (1st Cir.), cert. denied 455 U.S. 989, 102 S.Ct. 1612, 71 L.Ed.2d 848; *NLRB v. Transportation Management Corp*., 462 U.S. 393; *Delta Gas, Inc*., 283 NLRB 391, enfd. 840 F.2d 309 (5th Cir.); *Southwire Co. v. NLRB*, 820 F.2d 453 (D.C. Cir.); *Yaohan of California*, 280 NLRB 268.

The General Counsel argued that it was obvious that Respondent knew of Burden's participation in the investigation by the NLRB of charges in Cases 11–CA–13756 and 11–CA–13891. As to Case 11–CA–13756, I see nothing apparent on that charge which would inform anyone that Derek Burden was involved in the investigation. However, I agree with the General Counsel as to Case 11–CA–13891. Although that charge was dismissed, it does allege that Respondent illegally disciplined employees including Derek Burden and Willie Boseman. Therefore, I find in agreement with the General Counsel that the discharge of Burden violated Section 8(a)(4) as well as Section 8(a)(1) and (3).

B. *The Alleged Illegal Warnings*

1. Willie Boseman

August 1990

As shown above, Boseman received a warning on August 5, 1990, for being out of his work station. Boseman admitted that he was in the preparation department talking with Alvin Beckett for about 5 minutes. He was talking with Beckett before the shift change and he had done that in the past without anyone saying anything to him or writing him up. Boseman testified without rebuttal that Supervisor Bob White saw him and Beckett talking but did not say anything to them.

Boseman testified that it was common for employees to visit before shift change and that other employees including Mark Presley and Ernie Sutton, had done that. Supervisors Fernie Jarman and Charlie Hines told Boseman that Dave Parsons had told them to write up a warning on him. Boseman recalled that the only occasion where he received a warning in regard to his being out of his work station occurred around 1986 when Jimmy Player walked by and threatened to ''kick my MF A.'' On that occasion Boseman followed Player back to another area and they had words.

Findings

The unrebutted testimony illustrated that before this particular incident, employees were permitted to engage in the same type conduct engaged in by Boseman on this occasion. Warnings offered into evidence by Respondent, failed to show that the contrary was the case. Those warnings illustrated circumstances which were obviously different than what was involved here.

In addition to the warnings issued to Boseman and Derek Burden for being out of their work areas, Donald Wicker was warned for solicitation of personal materials in the production area; Andrew Newsome was warned for leaving the plant at noon and not returning; Willie Williams was warned for being out of his work area and being 20–25 and 10–15 minutes late on November 13 and 15, 1989; Nelson Artis was warned for leaving the plant without permission; Jerry Dawson was discharged for being out of work area and tampering with equipment not authorized and using threatening, abusive and profane language to another employee and starting a fight; Tony James was warned for leaving the plant without permission as was Darrell Caulisharo; Sylvester Brown took a break and was gone for 65 minutes; and Robert Dennis left the plant without permission and was seen in the parking area with a visitor.

Moreover, there was no rebuttal of the testimony that Supervisor Bob White said nothing to Boseman when he saw Boseman engaged in the allegedly improper conduct nor was there rebuttal evidence to the testimony that specific employees Presley and Sutton were permitted to engage in similar practices.

Moreover, when Supervisor Charlie Hines testified in an effort to justify this warning, he added that Boseman reported late to work. However, the warning said nothing about Boseman being late and implied to the contrary by stating that Boseman was in another work area in the plant between 7:45 and 7:55 p.m. Willie Boseman's time to start work was 8 o'clock.

The evidence as shown above, illustrated that Respondent was well aware that Boseman was a strong union supporter.

In view of the finding of disparity and the showing of timing (coming shortly after the union campaign), along with the evidence showing that Respondent was aware of Boseman's prounion activities, I find that the General Counsel proved that Respondent was motivated to discipline Boseman because of Boseman's union activities. Respondent failed to show that it would have disciplined Boseman in the absence of his union activities. *Wright Line*, supra; *NLRB v. Transportation Management Corp*., supra; *Delta Gas*, supra; *Southwire Co. v. NLRB*, supra; *Yaohan of California*, supra.

February 1991

On February 20, 1991, Boseman received a written warning for incorrectly punching the timeclock. Boseman apparently missed the out button and punched the cost center button which should be punched when an employee is assigned to a different than normal job. David Ellis told Boseman that he would not get fired because of that warning but that he would be fired if he received another warning.

When David Ellis asked Boseman to sign the warning Boseman complained that if he had hit the wrong button it was an honest mistake, Ellis told him to talk to Terry in personnel. Boseman talked to a lady in personnel who told him the matter had been straightened out.

David Ellis told Boseman that it was up to Wydel Swenson whether the warning stood but when Boseman went to Wydel, Swenson told him that David Ellis was the one that told him to give Boseman the warning. Boseman did not pursue the matter after that.

Findings

In its defense Respondent offered other warnings in evidence. There was no showing that anyone was actually warned for mishitting the proper checkout button on the clock. However, some of the other warnings were, like the warning to Boseman, shown as improper clocking.

Those warnings show that Anthony Parker was terminated because he was warned three times for failing to follow proper timeclock policy and inaccurately reporting work time. On one of those three occasions the warning shows that Anthony Parker was 15 minutes late and did not punch in or notify his supervisor.

On April 11, 1991, and again, on September 17, 1991, Shelton Wellington was warned because he failed to punchout. On June 28, 1991, Flint Gaskey was warned for forgetting to bring his employee badge to work and failing to punch in and out properly. Ann Boykin was warned on March 21, 1991, because she failed to clock out. Scott Allen was warned on March 12, 1991. Allen's warning shows that he forgot to bring his employee badge to work and that he was reminded that he ''get's paid by clocking in and out with his badge.'' Daniel Miller was warned on March 4, 1991, as was Edma Wilson on February 21, 1991, for forgetting to clock in.

John Johnson was warned on February 18, 1991, for failing to clock in on February 14 and February 16, 1991. Thomas Best failed to clockout on February 15 and was warned. Randy Sutton was warned for missing his clock in registration on February 12, 1991. Greg Johnson was warned for missing his clock in registration on January 15, 1991. On February 11, 1991, Dwight Swinson failed to clock in. Swinson's warning noted that he had been warned before about the importance of clocking in. Doug Coker was warned for failing to clock out on February 8, 1991.

On February 3, 1991, Michael Harris failed to clock in properly and received a warning. Nevin Bundell received a similar warning for failing to clock in properly on February 4, 1991.

On February 1, 1991, Donna Kaye Walker was warned for leaving her badge at home.

On January 26, 1991, John Willis was warned for forgetting his badge. Subsequently, on January 31, 1991, John Willis was warned for missing clock in and out due to not having his badge and not informing his supervisor.

Edward Rubinstein was warned on January 31 for failing to clock in properly due to a lost badge. Joe Strickland was warned for failing to clock in properly on January 28, 1991.

On a personnel action form dated February 2, 1991, there was a notation regarding Clyde Kesler of ''error report of missing clock in registration. Ken, told me that he got the sound, light & read out saying he was clock in.'' Kesler's personnel action form did not include a check showing that any disciplinary action was taken. All the action requested blanks were not checked.

As to Willie Boseman's February 19, 1991 personnel action, the blank ''other'' under action requested, was checked.

In view of the full record I am not convinced that Boseman was treated in a disparate fashion as to this particular warning. The record illustrated that Respondent routinely warned its employees because of timeclock infractions including the infraction of failing to clock in or out properly. Therefore, I find that the General Counsel failed to prove a prima facie case as to this allegation. see *Wright Line*, supra; *NLRB v. Transportation Management Corp*., supra; *Delta Gas*, supra; *Southwire Co. v. NLRB*, supra; *Yaohan of California*, supra.

2. Derek Burden

January 1990

Burden received a warning for being out of his work area on January 24, 1990. He walked out of the canteen because the cigarette smoke was bad. While walking through the plant he saw and spoke to employee Thurman Burdon. Department Head Charles Smith saw Derek Burden and asked what he was doing in that department. Burden said he had just stopped to say hello to Thurman Burdon. Smith asked if Burden's supervisor, Wanda Dawson, knew he was in that department and Burden told him that she did not know because he was on his lunchbreak.

Charles Smith testified in accord with the testimony of Derek Burden. Smith testified that after Burden left he phoned Burden's supervisor, Wanda Dawson, and reported what had occurred.

Derek Burden's warning dated January 24, 1990, states:

> It was reported to me by Charles Smith Finishing Dept Head that Derek was out of his work area Mon 1/23/90. When asked why he was in finishing he replied that he wanted to talk with one of Charles' employees.
>
> . . . .
>
> I have told Derek that he is not to be out of his work area or designated break area without my permission as this is Company policy.

On cross-examination Charles Smith admitted that Respondent's current handbook does not include a rule prohibiting employees from being out of their work areas during their lunchbreak. The current handbook was not in effect during January 1990 and Smith could not recall whether there was a handbook in effect at that time.

Thurman Burdon, testified that Derek Burden came to him at his machine while he was working during January 1990. Derek Burden spoke and Thurman Burdon returned the greeting. As he did so Thurman Burdon noticed that Department Head Charles Smith approached Derek Burden as Derek walked off. Thurman Burdon could not hear what was said between Charles Smith and Derek Burden.

According to Thurman Burdon it was common for employees to walk by and speak during January 1990 and to his knowledge there was no company policy or practice prohibiting that practice.

Smith testified that employees are warned, and that he has been involved in warning employees, for being out of their work areas and that visits and conversations between working employees and employees from other work areas, does interfere with work. Respondent introduced a packet of warnings that it has issued employees for being out of their work areas.

Those warnings included several warnings that were issued before the union campaign of 1990. Those included the following:

Andrew Newsome was warned on November 23, 1989:

> Employee left for lunch at 12 noon, 11/23/89 and did not return to work. Employee was not given permission to leave work for the remainder of the 11/23/89 workday.

Willie Williams was warned on November 15, 1989:

> Employee observed talking with co-workers and smoking in unauthorized areas in lieu of and while working. The talking resulted in reduced work levels by other employees. Employee was 20-25 minutes late and 10-15 minutes late returning from lunch on 11/13/89 and 11/15/89. Employee acted and contributed to behavior contrary to established standards and reduced production.

On August 4, 1989, Jerry L. Dawson was discharged:

> Terminated because of being out of work area and tampering with equipment not authorized to him and using threatening, abusive, and profane language to a fellow employee thus starting a fight.

Tony James was warned on January 13, 1989:

> All employees have been told not to go outside without supervisor knowing where he/she is going. Employee decided to go outside without letting anyone know.

On January 13, 1989, Darrell K. Coulisharo was warned:

> Employees have all been told that you can not go outside of plant without supervisors consent. Employee went outside without my consent so it is automatic reprimand.

Sylvester Brown was warned on October 4, 1988:

> [Out of work area for 65 minutes]—Sylvester went on break at 1:55am and did not come back to his work area until 3:am. He was paged over the intercom after he was gone about 30 mins., but he didn't come to the color shop. I went to both breakrooms and checked the bathrooms and I couldn't locate him. I had three other employees look for him but he still wasn't located. He came back at 3:am and had nothing to say when I asked were [sic] he had been.

On February 23, 1987, Robert Harold Dennis II was warned:

> Employee was seen outside of plant in parking lot area with a visitor when he should have been in work area or canteen. [Employee left plant without asking in advance.]

Nelson Artis who is alleged as an illegal dischargee, received a warning before the Union campaign, on August 24, 1989:

> Employee left plant without supervisors permission.

Included in Respondent's evidence were the following warnings which were issued after the union campaign started in 1990.

On August 16, 1990 alleged discriminatee Willie Boseman received a warning as follows:

> On Wednesday 8–15–90 Willie Lee Boseman came to work and between 7:45 and 7:55 A.M. Willie was seen in the preparation area. Willie Boseman shift does not start until 8:00 A.M.
>
> The Company policy states that an employee is not to be out of his or her work area before, during or after his or her shift without permission.

On May 24, 1990, Donald W. Wicker received the following warning:

> Solicitation of personal materials in the production area of plant and being out of work area while doing this.

Findings

As in the case of Willie Boseman, the record shows that Respondent did not discipline employees for being out of their work areas for short time periods. The above-cited warnings show that only those employees that engaged in far more serious violations were warned until after the Union initiated its 1990 campaign. Then known union advocates Boseman and Burden were warned simply because they were observed out of their work areas. Before that time, as shown by the record and mentioned above regarding the warning to Boseman in August, employees were routinely permitted to visit in other areas even on occasions while employees were working. In the only other incident which resulted in a warning after initiation of the union campaign, an employee was warned for solicitation. I find, in view of the above, that the General Counsel proved that Respondent was motivated to warn Derek Burden because of his union activities. Respondent failed to prove that Burden would have been warned in the absence of union activities. There was no showing of why Respondent treated Burden with disparity. *Wright Line*, 251 NLRB 1083, enfd. 662 F.2d 899 (1st Cir.), cert. denied 455 U.S. 989; *NLRB v. Transportation Management Corp*., 462 U.S. 393; *Delta Gas*, 283 NLRB 391, enfd. 840 F.2d 309 (5th Cir.); *Southwire Co. v. NLRB*, 820 F.2d 453 (D.C. Cir.); *Yaohan of California*, 280 NLRB 268.

December 4 and 10, 1990

As shown above under the topic of the discharge of Derek Burden I found that Respondent violated Section 8(a)(1) and (3) by issuing warnings to Burden on December 4 and 10, 1990.

C. *The Alleged Illegal Wage Increase*

Respondent posted the following notice to employees:

> January 10, 1990
>
> GOLDTEX IS PLEASED TO ANNOUNCE THAT A GENERAL WAGE INCREASE IS BEING GIVEN FOR THE PAYROLL PERIOD ENDING FEBRUARY 4, 1990.YOUR SUPERVISOR WILL COMMUNICATE YOUR NEW WAGE RATE TO YOU THE LAST WEEK IN JANUARY.

SIMULTANEOUS WITH THE WAGE INCREASE, THE QUALITY INCENTIVE MAXIMUM BONUS WILL REVERT TO ITS NORMAL 6%.

THE MANAGEMENT OF THE COMPANY WOULD LIKE TO THANK EACH OF YOU FOR YOUR HARD WORK AND EFFORTS MADE DURING A DIFFICULT 1989.

/s/ Will Hopper
Will Hopper
President

Douglas Horne testified that the last wage increase he received before January 1990, was in January 1987. Derek Burden recalled that the employees received a wage increase in 1988. However, Burden agreed with Horne that the employees had not received a wage increase in 1989.

On November 2, 1989, Respondent posted the following:

TO ALL EMPLOYEES:

As you are all aware, we have had severe quality problems for the past (6) months, which has cost the Company and our customers a great deal of money. Our credits for the past (6) months are in excess of $900,000. This level of quality problems cannot continue if we are to retain our customers and stay in business.

I know all of you are concerned about when the Company is going to give its next wage increase. With the costs of our quality problems, a wage increase at this time is not possible without an improvement in our quality. Right now, we are paying our customers for claims with money that could be used for wage increases and profits for the Company.

To provide you an opportunity to earn more, we are increasing the amount you can earn under the quality incentive system from 6% to 10%. Your wage increase has, in effect, been added to the quality incentive program, and it is up to you as to whether or not you earn it. After we get our quality and efficiencies back in line, we will grant a general wage increase. With your help, this can happen soon.

_____
Will Hopper
President

Jo Gurley, Respondent's comptroller, testified that she was the administrative assistant to Will Hopper during the fall of 1989. Gurley testified that she was aware that Respondent's board of directors was considering a wage increase for the employees during November 1989. She overheard a wage increase being discussed by members of the board including Saudi who is Respondent's chief executive officer.

Gurley testified that on January 10, 1990, she was told by Will Hopper to post the notice of a wage increase on the employees bulletin board. Some 10 or 15 minutes after that notice was posted Will Hopper received a phone call from the regional office of the NLRB. Will Hopper testified that he learned for the first time during that phone call that the employees were involved in a union organizing campaign.

Will Hopper testified that Respondent regularly granted wage increases and from December 1986 they customarily posted a notice advising employees of a wage increase which would be effective in January. Because of business difficulties including a high level of customer returns, credits, and allowances which had hurt the Company's profitability, Respondent announced on November 2, 1989 that the employees would not receive a wage increase.

Nevertheless, according to Will Hopper, an improved profitability picture enabled Respondent to announce a general wage increase on January 10, 1990. Hopper testified that it was not until a few minutes after the January 10 announcement of a wage increase was posted that he first learned through a phone call from the NLRB that the employees had petitioned to vote on selecting the Union as their bargaining representative. Hopper offered documentation that the board of directors considered granting a wage increase during their December 6, 1989 meeting and Hopper testified that the actual decision to grant wage increase in February 1990, was actually made a few days before the December 6, 1989 meeting of the board of directors. The financial turnaround which permitted that wage increase started in October 1989, when, instead of a substantial loss like was experience in the prior 2 months, Respondent actually experienced a $200,000 profit.

Findings

There is substantial suspicion as to the timing of the wage increase. Some 2 months after announcing that it could not grant a wage increase Respondent turned about and, some 2 days after the Union filed its representation case petition, Respondent posted notice of an imminent wage increase.

Nevertheless there was no evidence showing that Respondent knew of the union campaign before it decided, and notified its employees, of its February 1990 wage increase.

I find that the General Counsel failed to prove that the 1990 wage increase was motivated by the employees' union activities.

Objections

In a Decision and Direction which issued on May 1, 1990, the Regional Director, Region 11, found that the evidence in support of the Union's Objections 1, 2, 3, 6, 7, and 8 is similar to evidence advanced in support of Case 11–CA–13756, and directed consolidation with the issues in that case to be decided by an administrative law judge. Objection 1 involved a prediction of futility by Respondent; Objection 2 interrogation; Objection 3 solicitations of grievances and withdrawals; Objection 6 discrimination regarding working conditions; Objection 7 intimidation, threats, and coercion, and Objection 8 lumps all the allegations together.

In view of my findings above, I conclude that the evidence does establish objectionable conduct within the scope of the objections referred to me by the Regional Director and I recommend that this matter be remanded to the Regional Director for appropriate action in setting aside the past election and scheduling a rerun election.

Conclusions of Law

1. Goldtex, Inc. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Amalgamated Clothing and Textile Workers Union, AFL–CIO, CLC is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent by threatening its employees that they would work less hours and things would pick up after the election; by interrogating its employees about their union activities; by threatening its employees with loss of job and that its Employer was out to get them; by soliciting its employees to withdraw their union authorization cards; by prohibiting its employees from distributing union leaflets during nonwork time in nonwork areas; by asking its employees for another chance and promising there will be changes after the election; by soliciting its employees to discuss their problems with the company president; by promising that the Company president will make changes; by promising its employees that their problems will be worked out if they listen to the Employer's president; by threatening its employees that it will be futile to support the Union; by threatening its employees that the Company could close its doors over the Union; by holding out to its employees that it had reassigned supervisors because of employee complaints; and by telling its employees that they could not talk because they may be talking about the Union; because of its employees' union activities, Respondent has engaged in conduct in violation of Section 8(a)(1) of the Act.

4. Respondent, by discharging and issuing warnings to, employees Willie Boseman and Derek Burden, because of its employees' activities on behalf of Amalgamated Clothing and Textile Workers Union, AFL–CIO, CIO has violated Section 8(a)(1), (3), and (4) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent has illegally discharged its employees in violation of sections of the Act, I shall order Respondent to offer Willie Boseman and Derek Burden, immediate and full reinstatement to their former positions, or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges. I further order Respondent to make Willie Boseman and Derek Burden whole for any loss of earnings they suffered as a result of the discrimination against them and that Respondent remove from its records any reference to the unlawful actions against its employees and notify Willie Boseman and Derek Burden in writing that Respondent's unlawful conduct will not be used as a basis for further personnel action. Backpay shall be computed as described in *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest as described in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[1]

ORDER

The Respondent, Goldtex, Inc., Goldsboro, North Carolina, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Engaging in conduct in violation of Section 8(a)(1) of the Act by threatening its employees that they would work less hours and things would pick up after the election; by interrogating its employees about their union activities; by threatening its employees with loss of job and that its Employer was out to get them; by soliciting its employees to withdraw their union authorization cards; by prohibiting its employees from distributing Union leaflets during nonwork time in nonwork areas; by asking its employees for another chance and promising there will be changes after the election; by soliciting its employees to discuss their problems with the company president; by promising that the company president will make changes; by promising its employees that their problems will be worked out if they listen to the Employer's president; by threatening its employees that it will be futile to support the Union; by threatening its employees that the Company could close its doors over the Union; by holding out to its employees that it had reassigned supervisors because of employee complaints; and by telling its employees that they could not talk because they may be talking about the Union; because of its employees' union activities.

(b) Discharging and issuing warnings to its employees because of their protected activities.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Willie Boseman and Derek Burden immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make Willie Boseman and Derek Burden whole for any loss of earnings plus interest, they suffered by reason of its illegal actions.

(b) Rescind its discharges and illegal warnings issued to Willie Boseman and Derek Burden and remove from its files any reference to its illegal warnings and discharges of Willie Boseman and Derek Burden, and notify each of them in writing that this has been done and that evidence of its unlawful actions will not be used against them in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Goldsboro, North Carolina, copies of the attached notice marked ''Appendix.''[2] Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by the Respondent's authorized representative, shall be posted by the Respondent imme-

[1] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

diately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten our employees that they would work less hours and things would pick up after the election.

WE WILL NOT interrogate our employees about their union activities.

WE WILL NOT threaten our employees with loss of job and that we are out to get them because of their union activity.

WE WILL NOT solicit our employees to withdraw their union authorization cards.

WE WILL NOT prohibit our employees from distributing union leaflets during nonwork time in nonwork areas.

WE WILL NOT ask our employees for another chance and promise there will be changes after the election.

WE WILL NOT solicit our employees to discuss their problems with the company president during a union organizing campaign.

WE WILL NOT promise that the company president will make changes after the union election.

WE WILL NOT promise our employees that their problems will be worked out if they listen to the company president.

WE WILL NOT threaten our employees that it will be futile to support the Union.

WE WILL NOT threaten our employees that the Company could close its doors over the Union.

WE WILL NOT hold out to our employees that we have reassigned supervisors because of employee complaints during the union organizing campaign.

WE WILL NOT tell our employees that they could not talk because they may be talking about the Union.

WE WILL NOT discharge our employees because they engage in union activities.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed them by Section 7 of the National Labor Relations Act.

WE WILL offer immediate and full reinstatement to Willie Boseman and Derek Burden to their former jobs or, if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights and privileges.

WE WILL make Willie Boseman and Derek Burden, whole for any loss of earnings they suffered by reason of our discrimination against them with interest.

WE WILL notify Willie Boseman and Derek Burden, in writing, that we have rescinded the actions found illegal herein and that we will not use those actions against them in any manner.

GOLDTEX, INC.